THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. Nos. 14872, 14874, 14875, 14956, 14958, 14959, 14960 and 14961 of 2006

Common order::

M/s. Vissa Television Network Limited, has filed these writ petitions assailing the orders passed by the 2nd respondent, namely the Authority under Section 48 of the A.P. Shops and Establishments Act-cum-Assistant Commissioner of Labour-II, Hyderabad, setting aside the orders of termination passed by the petitioner against the 1st respondent-workman and directing the petitioner to reinstate the 1st respondent-workman into service and pay half of the back wages from the date of termination to the date of reinstatement.

The learned counsel for the petitioner submitted that due to non-renewal of their licence, the petitioner stopped its operations temporarily, and the licence having been renewed, it started its operations from December, 2004. Even though the 1st respondent has not been attending to duties, he has made a false claim before the 2nd respondent stating that the petitioner had not been paying him salary and had illegally terminated his services in January, 2005. However, the 2nd respondent without looking into the stark realities, without looking into the legal position and without providing opportunity to the parties to adduce evidence, has entertained the claim of the 1st respondent-workman, and passed the impugned order, setting aside the order of termination and directed the petitioner to reinstate the 1st respondent-workman into service and pay half of the back wages from the date of termination to the date of reinstatement, which is illegal and arbitrary. He submitted that even though the petitioner has alternative remedy by way of second appeal under Section 48(3) of the A.P. Shops and Establishments Act, 1988 (for short 'the Act'), yet availability of alternative remedy is not a bar for the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution of India, and more so when the 2nd respondent had acted wholly illegally in entertaining the claim of the 1st respondent-workman. In support of his submission that on the ground of availability of alternative remedy,

the Court cannot refuse to entertain writ petition against an order, if it is wholly illegal and without jurisdiction, the learned counsel for the petitioner placed reliance on a judgment of a Division Bench of this Court in **Hindustan Coca-Cola Beverages Private Limited v. Assistant Commissioner of Labour**[1].

Heard the learned counsel for the petitioner.

Though the petitioner contends that the claim made by the 1st respondent-workman is false, the fact remains, the claim was contested by the petitioner by filing counter. However, a reading of the impugned order would disclose that no evidence was let in by the parties. Despite non-adducing of evidence by the parties in support of their respective claims, the 2nd respondent had entertained the claim of the 1st respondent-workman and allowed it by setting aside the termination order, and directing the petitioner to reinstate the 1st respondent-workman into service and pay him half of the back wages from the date of termination till the date of reinstatement.

As against the impugned order, passed by the 2nd respondent, the petitioner has an efficacious alternative remedy by way of second appeal under Section 48(3) of the Act, but the petitioner without availing the said remedy, has filed this writ petition. The petitioner can well raise all the grounds available to him against the impugned order in the second appeal. It is the contention of the petitioner that despite existence of alternative remedy, he is entitled to file writ petition. I am unable to accept this contention of the petitioner. There is no doubt that existence of alternative remedy is not a bar to the maintainability of the writ petition. But, a writ petition, despite existence of alternative remedy, can be entertained only if it is filed for enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged[2]. It is not the case of the petitioner that he is seeking enforcement of his fundamental rights or that principles of natural justice are violated or that the 2nd respondent has no jurisdiction to entertain the claim or that he is challenging the vires of the A.P. Shops and Establishments Act, 1988. That not being his case, the petitioner cannot be allowed to bypass the remedy of second appeal available to him against the

impugned order under Section 48(3) of the Act and file the writ petition. In that view of the matter, reliance placed by the learned counsel for the petitioner on the judgment of the Division Bench of this Court in **Hindustan Coca-Cola Beverages Private Limited v. Assistant Commissioner of Labour** (1 supra) in support of his contention that despite existence of alternative remedy writ petition cannot be a bar, is of no avail to him.

It is the contention of the petitioner that if he is relegated to the remedy of second appeal, available to him under Section 48(3) of the Act, against the impugned order, for preferring the second appeal, he will be required to deposit the entire amount of back wages, as ordered by the 2nd respondent, by reason of the impugned order, which is wholly illegal, and in the event, the back wages to be deposited by the petitioner for preferring the second appeal, is allowed to be withdrawn by the 1st respondent-workman, then the petitioner will be left with no remedy to recover the back wages from the 1st respondent-workman, in the event the petitioner succeeds in the second appeal. In view of such circumstances, the learned counsel for the petitioner contends that the petitioner is entitled to file the writ petition assailing the impugned order in stead of second appeal. I am unable to accept this contention of the petitioner. Merely because the petitioner for preferring the second appeal will be required to deposit the entire back wages, as ordered by the 2nd respondent, it does not mean that he is entitled to file the writ petition assailing the impugned order, against which, remedy of second appeal is available to him under Section 48(3) of the Act. The proviso to Section 48(3) of the Act specifically requires the person preferring second appeal against the decision of the authority under Section sub-section (2), to deposit the back wages, ordered by the authority. The deposit of the back wages for preferring the second appeal being mandatory, the petitioner to avoid deposit of the back wages, cannot be allowed to file writ petition by bypassing the remedy of second appeal. Though the proviso to Section 48(3) of the Act specifically requires the person preferring the second appeal to deposit the back wages, as ordered by the authority under sub-section (2), it does not speak of withdrawal of the said back wages by the workman. In such circumstances, it should be considered whether the second appellate authority, in whom the power to hear and decide the second appeal is vested, can restrain the workman from withdrawing

the back wages to be deposited by the petitioner for preferring the second appeal.

Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. The power to hear and decide the appeal is a substantive power, with which power flows incidental power of taking actions, pending appeal, else the very purpose of preferring the appeal would be frustrated. Therefore, it can be concluded that the authority in whom the power of deciding the second appeal is vested, is also vested with the power of granting stay of the operation of the decision sought to be appealed, which is essential for the proper exercise of the substantive power to
decide the second appeal. But having regard to the fact that the proviso to Section 48(3) of the Act, for preferring the second appeal, mandatorily requires deposit of back wages, as ordered by the authority, the second appellate authority, shall having regard to the incidental power vested in it, decide whether the back wages to be deposited by the petitioner for preferring the second appeal, can be permitted to be withdrawn by the workman or not, and more so when Section 48 of the Act, does not speak of withdrawal of the back wages by the workman.

In the above view of the matter, I deem it appropriate to dispose of the writ petition with the following directions:

The petitioner may avail the remedy of second appeal, available to him under Section 48(3) of the Act, against the impugned order, passed by the authority under sub-section (2) along with back wages, as ordered by the authority under the impugned order, within a period of four weeks from the date of receipt of a copy of this order. Since it is the case of the petitioner that the impugned order passed by the 2nd respondent, is an illegal order, he is at liberty to file an application along with the second appeal, requesting the second appellate authority to injunct the 1st respondent-workman from withdrawing the back wages, to be deposited by him, for preferring the second appeal. And if any such application is filed, the second appellate authority, in whom the substantive power of hearing and deciding the second appeal is vested, may in exercise of his incidental power to grant stay of the order appealed, shall consider and pass appropriate orders thereon, injuncting the 1st respondent-workman

from withdrawing back wages to be deposited by the petitioner, pending disposal of the second appeal, keeping in view the fact that in the event the back wages to be deposited by the petitioner, are allowed to be withdrawn by the 1st respondent-workman, the petitioner would be left with no remedy to recover the same from the 1st respondent-workman in the event the petitioner succeeds in the second appeal.

Accordingly, the writ petitions are disposed of. No costs.

N.V. RAMANA, J.

Date: 20.07.2006
KSR/NSR

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[1] 2004 (7) ALT 9 (DB)

[2] See Whirlpool Corporation v. Registrar of Trade Marks (1998) 8 SCC 1 = AIR 1999 SC 22